IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.78 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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THE COMMISSIONER OF INCOME-TAX, GUJARAT-II- Applicant(s)
Versus
BIRADARI INVESTMENT PVT. LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR BD KARIA for MR RK PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “C”, has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the assessee:

> “Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of interest of 11% bond on accrual basis and of interest on convertible debentures of a public limited company ?”

2. The Assessment Year is 1985-86 and the relevant accounting period is the year ended on 30th June, 1984.

3. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel on behalf of the applicant-revenue, and Mr.B.D.Karia, learned advocate on behalf of the respondent-assessee.

4. Learned advocates appearing for the parties have submitted that in the instant case, Hon'ble Mr.Justice D.A.Mehta had appeared before the Tribunal as an advocate for the assessee. They have requested this Bench to take up the matter as they do not have any objection and more particularly when the case is covered by the judgement delivered by this Court in another matter. In pursuance of this special request made by the learned advocates, this Bench has taken up the matter for hearing.

5. As can be seen from the order of the Tribunal, the Tribunal has followed its earlier decision dated 16th January, 1991 in ITA No.2770/Ahd/1987. It is common ground between the parties that the aforesaid order of the Tribunal had been carried before this Court by way of a reference being Income Tax Reference No.224 of 1991 wherein this Court had answered the question in the affirmative i.e. in favour of the assessee and against the Revenue.

6. In the circumstances, following the ratio of the aforesaid decision rendered in Income Tax Reference No.224 of 1991 dated 1st October, 2002, the question referred is answered in the affirmative i.e. in favour of the assessee and against the revenue.

7. The reference stands disposed of accordingly, with no order as to costs.

Sd/- Sd/-
[D.A. MEHTA, J] [H.N. DEVANI, J]

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*Bhavesh**